
PRELIMINARY DRAFT
No. 3425

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2004 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 27-4-1-4; IC 27-8-11-7; IC 27-13-15-4.

Synopsis: Health provider reimbursement contracts. Prohibits certain provisions in health provider reimbursement agreements.

Effective: July 1, 2004.



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.178-2003,
2 SECTION 35, AS AMENDED BY P.L.201-2003, SECTION 2, AND
3 AS AMENDED BY P.L.211-2003, SECTION 1, IS CORRECTED
4 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
5 2004]: Sec. 4. The following are hereby defined as unfair methods of
6 competition and unfair and deceptive acts and practices in the business
7 of insurance:

8 (1) Making, issuing, circulating, or causing to be made, issued, or
9 circulated, any estimate, illustration, circular, or statement:

10 (A) misrepresenting the terms of any policy issued or to be
11 issued or the benefits or advantages promised thereby or the
12 dividends or share of the surplus to be received thereon;

13 (B) making any false or misleading statement as to the
14 dividends or share of surplus previously paid on similar
15 policies;

16 (C) making any misleading representation or any
17 misrepresentation as to the financial condition of any insurer,
18 or as to the legal reserve system upon which any life insurer
19 operates;

20 (D) using any name or title of any policy or class of policies
21 misrepresenting the true nature thereof; or

22 (E) making any misrepresentation to any policyholder insured
23 in any company for the purpose of inducing or tending to
24 induce such policyholder to lapse, forfeit, or surrender ~~his~~ *the*
25 *policyholder's* insurance.

26 (2) Making, publishing, disseminating, circulating, or placing
27 before the public, or causing, directly or indirectly, to be made,
28 published, disseminated, circulated, or placed before the public,
29 in a newspaper, magazine, or other publication, or in the form of
30 a notice, circular, pamphlet, letter, or poster, or over any radio or
31 television station, or in any other way, an advertisement,



1 announcement, or statement containing any assertion,
2 representation, or statement with respect to any person in the
3 conduct of ~~his~~ the person's insurance business, which is untrue,
4 deceptive, or misleading.

5 (3) Making, publishing, disseminating, or circulating, directly or
6 indirectly, or aiding, abetting, or encouraging the making,
7 publishing, disseminating, or circulating of any oral or written
8 statement or any pamphlet, circular, article, or literature which is
9 false, or maliciously critical of or derogatory to the financial
10 condition of an insurer, and which is calculated to injure any
11 person engaged in the business of insurance.

12 (4) Entering into any agreement to commit, or individually or by
13 a concerted action committing any act of boycott, coercion, or
14 intimidation resulting or tending to result in unreasonable
15 restraint of, or a monopoly in, the business of insurance.

16 (5) Filing with any supervisory or other public official, or making,
17 publishing, disseminating, circulating, or delivering to any person,
18 or placing before the public, or causing directly or indirectly, to
19 be made, published, disseminated, circulated, delivered to any
20 person, or placed before the public, any false statement of
21 financial condition of an insurer with intent to deceive. Making
22 any false entry in any book, report, or statement of any insurer
23 with intent to deceive any agent or examiner lawfully appointed
24 to examine into its condition or into any of its affairs, or any
25 public official to which such insurer is required by law to report,
26 or which has authority by law to examine into its condition or into
27 any of its affairs, or, with like intent, willfully omitting to make a
28 true entry of any material fact pertaining to the business of such
29 insurer in any book, report, or statement of such insurer.

30 (6) Issuing or delivering or permitting agents, officers, or
31 employees to issue or deliver, agency company stock or other
32 capital stock, or benefit certificates or shares in any common law
33 corporation, or securities or any special or advisory board
34 contracts or other contracts of any kind promising returns and
35 profits as an inducement to insurance.

36 (7) Making or permitting any of the following:

37 (A) Unfair discrimination between individuals of the same
38 class and equal expectation of life in the rates or assessments
39 charged for any contract of life insurance or of life annuity or
40 in the dividends or other benefits payable thereon, or in any
41 other of the terms and conditions of such contract; however, in
42 determining the class, consideration may be given to the
43 nature of the risk, plan of insurance, the actual or expected
44 expense of conducting the business, or any other relevant
45 factor.

46 (B) Unfair discrimination between individuals of the same



1 class involving essentially the same hazards in the amount of
2 premium, policy fees, assessments, or rates charged or made
3 for any policy or contract of accident or health insurance or in
4 the benefits payable thereunder, or in any of the terms or
5 conditions of such contract, or in any other manner whatever;
6 however, in determining the class, consideration may be given
7 to the nature of the risk, the plan of insurance, the actual or
8 expected expense of conducting the business, or any other
9 relevant factor.

10 (C) Excessive or inadequate charges for premiums, policy
11 fees, assessments, or rates, or making or permitting any unfair
12 discrimination between persons of the same class involving
13 essentially the same hazards, in the amount of premiums,
14 policy fees, assessments, or rates charged or made for:

15 (i) policies or contracts of reinsurance or joint reinsurance,
16 or abstract and title insurance;

17 (ii) policies or contracts of insurance against loss or damage
18 to aircraft, or against liability arising out of the ownership,
19 maintenance, or use of any aircraft, or of vessels or craft,
20 their cargoes, marine builders' risks, marine protection and
21 indemnity, or other risks commonly insured under marine,
22 as distinguished from inland marine, insurance; or

23 (iii) policies or contracts of any other kind or kinds of
24 insurance whatsoever.

25 However, nothing contained in clause (C) shall be construed to
26 apply to any of the kinds of insurance referred to in clauses (A)
27 and (B) nor to reinsurance in relation to such kinds of insurance.
28 Nothing in clause (A), (B), or (C) shall be construed as making or
29 permitting any excessive, inadequate, or unfairly discriminatory
30 charge or rate or any charge or rate determined by the department
31 or commissioner to meet the requirements of any other insurance
32 rate regulatory law of this state.

33 (8) Except as otherwise expressly provided by law, knowingly
34 permitting or offering to make or making any contract or policy
35 of insurance of any kind or kinds whatsoever, including but not in
36 limitation, life annuities, or agreement as to such contract or
37 policy other than as plainly expressed in such contract or policy
38 issued thereon, or paying or allowing, or giving or offering to pay,
39 allow, or give, directly or indirectly, as inducement to such
40 insurance, or annuity, any rebate of premiums payable on the
41 contract, or any special favor or advantage in the dividends,
42 savings, or other benefits thereon, or any valuable consideration
43 or inducement whatever not specified in the contract or policy; or
44 giving, or selling, or purchasing or offering to give, sell, or
45 purchase as inducement to such insurance or annuity or in
46 connection therewith, any stocks, bonds, or other securities of any



1 insurance company or other corporation, association, limited
 2 liability company, or partnership, or any dividends, savings, or
 3 profits accrued thereon, or anything of value whatsoever not
 4 specified in the contract. Nothing in this subdivision and
 5 subdivision (7) shall be construed as including within the
 6 definition of discrimination or rebates any of the following
 7 practices:

8 (A) Paying bonuses to policyholders or otherwise abating their
 9 premiums in whole or in part out of surplus accumulated from
 10 nonparticipating insurance, so long as any such bonuses or
 11 abatement of premiums are fair and equitable to policyholders
 12 and for the best interests of the company and its policyholders.

13 (B) In the case of life insurance policies issued on the
 14 industrial debit plan, making allowance to policyholders who
 15 have continuously for a specified period made premium
 16 payments directly to an office of the insurer in an amount
 17 which fairly represents the saving in collection expense.

18 (C) Readjustment of the rate of premium for a group insurance
 19 policy based on the loss or expense experience thereunder, at
 20 the end of the first year or of any subsequent year of insurance
 21 thereunder, which may be made retroactive only for such
 22 policy year.

23 (D) Paying by an insurer or ~~agent~~ *insurance producer* thereof
 24 duly licensed as such under the laws of this state of money,
 25 commission, or brokerage, or giving or allowing by an insurer
 26 or such licensed ~~agent~~ *insurance producer* thereof anything of
 27 value, for or on account of the solicitation or negotiation of
 28 policies or other contracts of any kind or kinds, to a broker,
 29 ~~agent, an insurance producer, or a~~ solicitor duly licensed
 30 under the laws of this state, but such broker, ~~agent, insurance~~
 31 *producer*, or solicitor receiving such consideration shall not
 32 pay, give, or allow credit for such consideration as received in
 33 whole or in part, directly or indirectly, to the insured by way of
 34 rebate.

35 (9) Requiring, as a condition precedent to loaning money upon the
 36 security of a mortgage upon real property, that the owner of the
 37 property to whom the money is to be loaned negotiate any policy
 38 of insurance covering such real property through a particular
 39 insurance ~~agent producer~~ or broker or brokers. However, this
 40 subdivision shall not prevent the exercise by any lender of ~~its or~~
 41 ~~his~~ *the lender's* right to approve or disapprove of the insurance
 42 company selected by the borrower to underwrite the insurance.

43 (10) Entering into any contract, combination in the form of a trust
 44 or otherwise, or conspiracy in restraint of commerce in the
 45 business of insurance.

46 (11) Monopolizing or attempting to monopolize or combining or



1 conspiring with any other person or persons to monopolize any
 2 part of commerce in the business of insurance. However,
 3 participation as a member, director, or officer in the activities of
 4 any nonprofit organization of ~~agents~~ *insurance producers* or other
 5 workers in the insurance business shall not be interpreted, in
 6 itself, to constitute a combination in restraint of trade or as
 7 combining to create a monopoly as provided in this subdivision
 8 and subdivision (10). The enumeration in this chapter of specific
 9 unfair methods of competition and unfair or deceptive acts and
 10 practices in the business of insurance is not exclusive or
 11 restrictive or intended to limit the powers of the commissioner or
 12 department or of any court of review under section 8 of this
 13 chapter.

14 (12) Requiring as a condition precedent to the sale of real or
 15 personal property under any contract of sale, conditional sales
 16 contract, or other similar instrument or upon the security of a
 17 chattel mortgage, that the buyer of such property negotiate any
 18 policy of insurance covering such property through a particular
 19 insurance company, ~~agent,~~ *insurance producer*, or broker or
 20 brokers. However, this subdivision shall not prevent the exercise
 21 by any seller of such property or the one making a loan thereon of
 22 ~~his, her, or its~~ the right to approve or disapprove of the insurance
 23 company selected by the buyer to underwrite the insurance.

24 (13) Issuing, offering, or participating in a plan to issue or offer,
 25 any policy or certificate of insurance of any kind or character as
 26 an inducement to the purchase of any property, real, personal, or
 27 mixed, or services of any kind, where a charge to the insured is
 28 not made for and on account of such policy or certificate of
 29 insurance. However, this subdivision shall not apply to any of the
 30 following:

31 (A) Insurance issued to credit unions or members of credit
 32 unions in connection with the purchase of shares in such credit
 33 unions.

34 (B) Insurance employed as a means of guaranteeing the
 35 performance of goods and designed to benefit the purchasers
 36 or users of such goods.

37 (C) Title insurance.

38 (D) Insurance written in connection with an indebtedness and
 39 intended as a means of repaying such indebtedness in the
 40 event of the death or disability of the insured.

41 (E) Insurance provided by or through motorists service clubs
 42 or associations.

43 (F) Insurance that is provided to the purchaser or holder of an
 44 air transportation ticket and that:

45 (i) insures against death or nonfatal injury that occurs during
 46 the flight to which the ticket relates;



- 1 (ii) insures against personal injury or property damage that
 2 occurs during travel to or from the airport in a common
 3 carrier immediately before or after the flight;
 4 (iii) insures against baggage loss during the flight to which
 5 the ticket relates; or
 6 (iv) insures against a flight cancellation to which the ticket
 7 relates.
- 8 (14) Refusing, because of the for-profit status of a hospital or
 9 medical facility, to make payments otherwise required to be made
 10 under a contract or policy of insurance for charges incurred by an
 11 insured in such a for-profit hospital or other for-profit medical
 12 facility licensed by the state department of health.
- 13 (15) Refusing to insure an individual, refusing to continue to issue
 14 insurance to an individual, limiting the amount, extent, or kind of
 15 coverage available to an individual, or charging an individual a
 16 different rate for the same coverage, solely because of that
 17 individual's blindness or partial blindness, except where the
 18 refusal, limitation, or rate differential is based on sound actuarial
 19 principles or is related to actual or reasonably anticipated
 20 experience.
- 21 (16) Committing or performing, with such frequency as to
 22 indicate a general practice, unfair claim settlement practices (as
 23 defined in section 4.5 of this chapter).
- 24 (17) Between policy renewal dates, unilaterally canceling an
 25 individual's coverage under an individual or group health
 26 insurance policy solely because of the individual's medical or
 27 physical condition.
- 28 (18) Using a policy form or rider that would permit a cancellation
 29 of coverage as described in subdivision (17).
- 30 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
 31 vehicle insurance rates.
- 32 (20) Violating IC 27-8-21-2 concerning advertisements referring
 33 to interest rate guarantees.
- 34 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 35 coverage for victims of abuse.
- 36 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 37 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 38 insurance producers.
- 39 (24) Violating IC 27-1-38 concerning depository institutions.
- 40 (25) *Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning*
 41 *the resolution of an appealed grievance decision.*
- 42 ~~(25)~~ **(26)** *Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or*
 43 *IC 27-8-5-19.2.*
- 44 ~~(25)~~ **(27)** *Violating IC 27-2-21 concerning use of credit*
 45 *information.*
- 46 **(28) Violating IC 27-8-11-7 or IC 27-13-15-4 concerning**



1 **provider reimbursement.**

2 SECTION 2. IC 27-8-11-7 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2004]: **Sec. 7. (a) An agreement between an insurer and a**
5 **provider under this chapter may not contain a provision that**
6 **requires the provider to offer to the insurer a reimbursement rate**
7 **that is equal to or lower than the lowest reimbursement rate that**
8 **the provider offers to another insurer.**

9 **(b) A violation of this section by an insurer is an unfair or**
10 **deceptive act or practice in the business of insurance under**
11 **IC 27-4-1-4.**

12 SECTION 3. IC 27-13-15-4 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2004]: **Sec. 4. (a) A contract between a health maintenance**
15 **organization and a participating provider may not contain a**
16 **provision that requires the participating provider to offer to the**
17 **health maintenance organization a reimbursement rate that is**
18 **equal to or lower than the lowest reimbursement rate that the**
19 **participating provider offers to another health maintenance**
20 **organization.**

21 **(b) A violation of this section by a health maintenance**
22 **organization is an unfair or deceptive act or practice in the**
23 **business of insurance under IC 27-4-1-4.**

24 SECTION 4. [EFFECTIVE JULY 1, 2004] **(a) IC 27-8-11-7, as**
25 **added by this act, applies to an agreement between an insurer and**
26 **a provider that is entered into, amended, or renewed after June 30,**
27 **2004.**

28 **(b) IC 27-13-15-4, as added by this act, applies to a contract**
29 **between a health maintenance organization and a participating**
30 **provider that is entered into, amended, or renewed after June 30,**
31 **2004.**

